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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,848	11/20/2003	John L. Myers	111703	6827

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EXAMINER

LOWE, MICHAEL S

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/716,848

**Applicant(s)**

MYERS, JOHN L.

**Examiner**

M. Scott Lowe

**Art Unit**

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                 |                                                                             |
|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                                 |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____                                                                      | 6) <input type="checkbox"/> Other: ____                                     |

### ***Drawings***

The drawings are objected to because of the reasons cited on the attached draftsperson's review form. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-5, 9,10,12-16, are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 2,286,387).

Re claims 1,13, Smith teaches a fireplace poker comprising a substantially linear shaft portion 10 having a hollow interior portion, a first end portion, and a second end portion, wherein said first end portion includes a handle means 10, and wherein said second end portion comprises a hook means 22.

Re claim 2, Smith teaches said poker includes an opening (not numbered) disposed at said first end portion which enables said hollow interior portion (not numbered) to be in fluid communication with the ambient surroundings.

Re claim 3, Smith teaches an opening 24 disposed at said second end portion that enables said hollow interior portion to be in fluid communication with the ambient surroundings.

Re claims 4,10,14, Smith teaches the cross sectional area of said opening disposed at said second end portion is less than the cross sectional area of the opening disposed at said first end portion (column 2, third paragraph).

Re claim 5, Smith teaches poker includes an opening 24 disposed at said second end portion which enables said hollow interior portion to be in fluid communication with the ambient surroundings.

Re claim 9, Smith teaches a fireplace poker comprising a substantially linear shaft portion 10 having a hollow interior portion, a first end portion, and a second end portion, wherein said first end portion includes a handle means 10, and wherein said second end portion comprises a hook means 22; and an opening 24 disposed at said

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second end portion which enables said hollow interior portion to be in fluid communication with the ambient surroundings.

Re claim 12, Smith teaches two hook portions 20 (figures 1 & 4) and 22.

Re claims 15,16, Smith teaches a process for kindling a fire comprising the steps of:

a) providing a fireplace poker comprising:

i) a shaft portion 10 having a hollow interior space and comprising a first end portion and a second end portion, wherein said hollow interior space of said shaft portion extends to both end portions of said shaft portion and is in fluid communication with the ambient surroundings at an opening at each of said first end portion and said second end portion of said shaft portion;

ii) a handle means 10 having a hollow interior space, a first end portion, and a second end portion, wherein said hollow interior space of said handle means extends to both end portions of said handle means and is in fluid communication with the ambient surroundings at an opening at each of said first end portion and said second end portion of said handle means, wherein said second end portion of said handle means is connected to said first end portion of said shaft portion such that the hollow interior space of the shaft portion is in fluid communication with the hollow interior space of the handle means; and

iii) a hook means 20, 22 disposed at the second end portion of said shaft portion; and

b) placing second end portion of said shaft portion in close proximity to a burning ember in a fireplace; and

c) blowing air from one's mouth into said first end portion of said handle means.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 2,286,387) in view of Carter (US 4,263,864).

Re claim 6, Smith does not teach the shaft portion comprising two tubular sections that are connected to one another by means of a connector. Carter teaches (figures 1-3) a shaft portion comprising two tubular sections (various) that are connected to one another by means of a connector 14, 36, 38 etc. in order to adjust the length. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by the general teaching of Carter to have the shaft portion comprising two tubular sections that are connected to one another by means of a connector in order to allow for an adjustable length.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 2,286,387) in view of Holleman (US 4,156,542).

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Re claim 7, Smith does not teach said handle means comprising wood. Holleman teaches a poker 10 with a wood handle 14. It is known that wood does not conduct heat well. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by Holleman to have a wood handle to protect the user from.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 2,286,387) in view of Loschelder (US 5,933,916).

Re claim 8, Smith does not teach said handle means comprising a ceramic material. Loschelder teaches a ceramic handle 16. It is well known that ceramic material does not conduct heat well. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by Loschelder to have a ceramic handle to protect the user from heat.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 2,286,387) in view of Carter (US 4,263,864) and Holleman (US 4,156,542).

Re claim 11, Smith does not teach the shaft portion comprising two tubular sections that are connected to one another by means of a connector. Carter teaches (figures 1-3) a shaft portion comprising two tubular sections (various) that are connected to one another by means of a connector 14, 36, 38 etc. in order to adjust the length. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by the general teaching of Carter to have the shaft portion

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comprising two tubular sections that are connected to one another by means of a connector in order to allow for an adjustable length. Smith does not teach said handle means comprising wood. Holleman teaches a poker 10 with a wood handle 14. It is known that wood does not conduct heat well. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by Holleman to have a wood handle to protect the user from.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 2,286,387) in view of Carter (US 4,263,864) and Loschelder (US 5,933,916).

Re claim 11, Smith does not teach the shaft portion comprising two tubular sections that are connected to one another by means of a connector. Carter teaches (figures 1-3) a shaft portion comprising two tubular sections (various) that are connected to one another by means of a connector 14, 36, 38 etc. in order to adjust the length. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by the general teaching of Carter to have the shaft portion comprising two tubular sections that are connected to one another by means of a connector in order to allow for an adjustable length. Smith does not teach said handle means comprising a ceramic material. Loschelder teaches a ceramic handle 16. It is well known that ceramic material does not conduct heat well. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Smith by Loschelder to have a ceramic handle to protect the user from heat.



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### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Janwich (US 957,679) teaches a hollow poker.

Lumia (US D338,813) teaches a poker bellows.

Snoddy (US 3,850,374) teaches a fire-starting device.

Williams (US 3,936,088) teaches a tube with two hooks at one end.

Wesson (US 4,004,539) teaches a hooked pole with two sections connected by a connector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is 703-305-1940. The examiner can normally be reached on 6:30am-4:30pm M,Tu,Th,F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

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